IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.315 OF 2006

In

SUIT NO.295 OF 2006

Aglowmed Ltd. : Plaintiff

V/s.

M/s.Neomed Healthcare & Ors. : Defendants

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Mr.M.A.Mahadgut for the plaintiff.

None present for the defendants.

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CORAM : S.A.BOBDE, J.

DATE : JANUARY 24, 2007.

P.C.

1. This is a Notice of Motion taken out by the plaintiff for an injunction restraining the defendants from using the mark "NCEF/NECF-O" in respect of the same medicinal preparation. The action is on the basis of passing off infringement and also infringement of the copyright subsisting in the packaging of the plaintiff's product.

2. The plaintiff's mark "PANCEF" is registered vide certificate of registration dated 24.10.2005. Admittedly, there is no registration of "PANCEF-O". The sale figures

and expenditure for promotion given by the plaintiff as on 8.12.2005 are as follows:-

"ANNUAL TURNOVER OF PANCEF

YEAR	AMOUNT (RS.IN LACS)
2002-2003	871.11
2003-2004	889.72
2004-2005	752.77

PROMOTIONAL EXPENSES FOR PANCEF

YEAR	AMOUNT (RS.IN LACS)
2002-2003	373.27
2003-2004	312.35
2004-2005	369.37"

The plaintiff’s mark "PANCEF" and the packaging is obvious from exhibits ‘C’, ‘D’, ‘E’ and ‘F’. The infringing products are at exhibits ‘K’, ‘L’ and ‘M’. Exhibits ‘K’ and ‘L’ are the products ‘NCEF’ manufactured by the defendants and exh.‘N’ is the product ‘NCEF-O’ manufactured by the defendants. The packaging of the two products bearing the mark "NCEF" is, in any case, deceptively similar to the plaintiff’s product. So also the word "NECF-O" is not identical to the plaintiff’s mark "PANCEF". There is sufficient deceptive similarity that may be caused in the course of pronouncing that

word. In any case, the packaging is very similar and almost identical to the plaintiff's product "PANCEF-O" at exh.'G'. The learned counsel for the plaintiff points out that the defendants have dishonestly adopted these marks as is apparent from the averments in para 10 which show that the defendant was working as a Divisional Sales Manager and his services were terminated from 25.11.2003 because he was found indulging in misappropriation of the company's product. Be that as it may, it is clear that the plaintiff has a prima facie right, particularly having regard to the fact that the products are medicinal, to an injunction in terms of prayer clauses (a), (b), (c) and (d), except the bracketed portion.

3. Notice of Motion is made absolute in the aforesaid terms.

S.A. BOBDE, J.